



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE EO EXAMINATIONS
1100 COMMERCE ST. MAIL STOP 4920 DAL
DALLAS, TEXAS 75242

501.03-00

January 27, 2012

Release Number: **201219027**

Release Date: 5/11/2012

LEGEND

ORG - Organization name

XX - Date Address - address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

(Phone)

(Fax)

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated October 6, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

Our adverse determination was made for the following reasons:

As a result of our examination of your activities and financial records, we have determined that your organization was not operated for tax exempt purposes under Code section 501(c)(3). Per Treasury Regulation 1.501(c)(3)-1(c)(1), your organization was required to establish that no more than an insubstantial part of your activities was not in furtherance of an exempt purpose.

You were found to also have violated the prohibition against inurement that is a requirement of exemption under Code section 501(c)(3). You expended funds to pay for the personal expenses of your president, who used your bank account as their own checking account.

Contributions to your organization are no longer deductible.

You are required to file income tax returns on Form 1120. If you have not already filed these returns and the examiner has not provided you instructions for converting your previously filed Form(s) 990-EZ to Form(s) 1120, you should file these income tax returns with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United

States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*
Form 6018, *Consent to Proposed Action - Section 7428*
Return envelope

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE EO Examinations

3251 N Evergreen Dr NE

Grand Rapids, MI 49525

August 29, 2012

**ORG
ADDRESS**

Taxpayer ID Number:

Form:

Tax Year(s) Ended

December 31, 20xx

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, Consent to Proposed Action - Section 7428, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The*

Examination Process, and page 2 of the enclosed Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*. These documents also explain how to appeal an IRS proposed action.

If you do submit a valid protest, then an Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498 and Publication 892 explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Tract Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by the EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

If you agreed with the proposed revocation or if you receive a final revocation letter, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 30 days of the date you agreed with the revocation or the date of your final revocation letter, whichever is sooner, unless a request for extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

We will notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code. Currently, only certain states are eligible to receive notification of proposed revocation actions. You can call the person at the heading of this letter to find out if your State is eligible to receive a notice of revocation of your tax-exempt status.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M Downing
Director EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination

In lieu of Letter 3618

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

LEGEND

ORG - Organization name XX - Date Address - address City - city
State - state President - president CO-1 through CO-46 - 1ST THROUGH
46TH COMPANIES

ISSUE

Whether ORG's tax exempt status under IRC Section 501(c)(3) should be revoked because it is not operated exclusively for tax exempt purposes and its net earnings inure to the benefit of its founder and president, President.

FACTS

ORG, was recognized as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code and issued an advance ruling letter in October 20XX. ORG was recognized as a public charity under Section 509(a)(1) by letter dated April 7, 20XX. President is the President and founder of ORG.

President started ORG in 20XX by renting office space inside of a building in City, State. The lease agreement for the office space is in the name of President, not ORG. President also runs her for-profit business, CO-1, from the same location.

Based on a review of the determination application and the records provided, it is not clear what the organization intended its main activities to be. There was mention of "bridging the gap for the disabled", but no actual activities were mentioned that described how that would be done, what it meant, or how it would be an exempt function.

During the year under examination the organization did not have any activities, and has not had any activities to present.

President decided to cease operations at the end of 20XX. She did not notify the state of State Charitable Trust division or the Internal Revenue Service that the organization would be closing. A final Form 990 was never filed.

ORG maintains one bank account at CO-2 in City, State.

The only records that President could produce for the year under examination were the bank statement for December 20XX and the carbon copies of checks written for the year. Bank statements, copies of cancelled checks, and deposit transaction records had to be summonsed from the bank.

INCOME

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

During the initial interview President claimed that the organization did not have any money during the year under examination. Further, she said that she had made a loan to the organization at the end of the year, and repaid herself shortly thereafter when she decided to close the organization.

The bank statements for the year were summonsed and examined; it was discovered that there were \$ in deposits made for the year. All copies of deposit records summonsed from the bank had notations that labeled the deposits as "contributions", not a loan as President previously claimed.

EXPENSES

Unsubstantiated expenses

All of the bank statements along with copies of cancelled checks written were reviewed for the calendar year 20XX. No documentation, such as receipts, was provided as to the business purpose of the expenditures.

ORG's expenses were analyzed as a part of the determination as to whether ORG was operating exclusively for a tax-exempt purpose. The following expenditures do not appear to have been made in furtherance of ORG's exempt purposes.

Check dated August 5, 20XX was written to the order of CO-3 (apparently a company that accepts deposits for CO-4 retirement savings accounts) with "investment" entered into memo of the check. (the debit was done electronically by the company, and the check number was not used when the transaction cleared) Check was written to the order of President in the amount of \$ with "counseling services" written in the memo of the check.

A wire transfer out of the account in the amount of \$ was made with no record of what the transfer was for, or how it relates to the exempt function of the organization.

Numerous debit card transactions to gas stations, beauty supply stores, restaurants, clothing stores, and other locations were made from the account of the organization with no documentation to show the relation of the expense to the exempt function to the organization.

The checks, cash withdrawals, wire transfer, and debit card transactions (listed below) did not have documentation to show their business purpose, and were not included as wages on a Form W-2. The Form filed with the Service Center, Part V-A Current Officers, Directors, Trustees, and Key Employee reported compensation for President of \$. None of the expenditures match with the \$ of wages listed on the Form . There were no records that authorized any additional salary to President. President was not issued a Form W-2 or 1099.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

DATE	CK#	NAME	AMOUNT	REMARKS
24-Jul	ATM			ATM Withdrawal
24-Jul	ATM			ATM Withdrawal
31-Jul	ATM	CO-5		
		July Total		
1-Aug	ATM	CO-5		
4-Aug	ATM	CO-6		
				Direct debit (Check # not used)
5-Aug	1126	CO-3		
5-Aug	ATM	CO-7		
7-Aug	ATM	CO-8		
11-Aug	ATM	CO-9		
11-Aug	ATM	CO-10		
11-Aug	ATM	CO-11		
12-Aug	ATM	CO-12		
13-Aug	ATM	CO-13		
13-Aug	ATM	CO-14		
13-Aug	ATM	CO-11		
13-Aug	ATM	CO-15		
13-Aug	ATM	CO-16		
14-Aug	ATM	CO-17		
14-Aug	ATM	CO-18		
14-Aug	ATM	CO-17		
18-Aug	ATM	CO-6		
19-Aug	ATM	CO-16		
21-Aug	ATM	CO-19		
21-Aug	ATM	CO-20		
26-Aug	ATM			ATM Withdrawal
26-Aug	ATM			ATM Withdrawal
29-Aug	ATM	CO-21		
		August Total		
2-Sep	ATM	CO-22		
2-Sep	ATM	CO-23		
2-Sep	ATM	CO-6		
2-Sep	ATM	CO-8		
2-Sep	ATM	CO-24		
2-Sep	ATM	CO-6		
10-Sep	ATM	CO-25		
11-Sep	Wire			Wire Transfer
11-Sep	ATM	CO-26		
11-Sep	ATM	CO-11		

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

12-Sep	ATM	CO-8	
15-Sep	ATM	CO-27	
15-Sep	ATM	CO-8	
15-Sep	ATM	CO-27	
17-Sep	ATM	CO-9	
17-Sep	ATM	CO-8	
18-Sep	ATM	CO-6	
19-Sep	ATM	CO-28s	
22-Sep	Withdrawal		Counter Withdrawal
22-Sep	ATM	CO-29	
25-Sep	1128	President	
29-Sep	ATM	CO-30	
29-Sep	ATM	CO-16	
29-Sep	ATM	CO-16	
30-Sep	ATM	CO-31	
		September Total	
1-Oct	ATM	CO-32	
1-Oct	ATM	CO-33	
1-Oct	ATM	CO-34	
6-Oct	ATM		ATM Withdrawal
6-Oct	ATM	CO-35	
9-Oct	ATM		ATM Withdrawal
12-Oct	ATM	CO-36	
14-Oct	ATM	CO-25	
14-Oct	ATM	CO-8	
15-Oct	ATM		Foreign ATM fee
20-Oct	ATM		ATM Withdrawal
20-Oct	ATM	CO-8	
21-Oct	ATM		ATM Withdrawal
21-Oct	ATM	CO-7	
22-Oct	ATM	CO-37	
23-Oct	ATM	CO-10	
23-Oct	ATM	CO-10	
27-Oct	ATM	CO-32	
27-Oct	ATM	CO-38	
27-Oct	ATM	CO-38	
28-Oct	ATM	CO-39	
31-Oct	Withdrawal		Counter Withdrawal
		October Total	
4-Nov	ATM	CO-40	
5-Nov	ATM	CO-41	
6-Nov	ATM	CO-8	
7-Nov	ATM	CO-10	
10-Nov	ATM	CO-42	

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended
ORG		December 31, 20XX

10-Nov	ATM	CO-24	
13-Nov	ATM	Address, (CO-8)	
14-Nov	ATM	CO-40	
14-Nov	ATM	Address, (CO-8)	
14-Nov	ATM	CO-43	
17-Nov	Withdrawal		Counter Withdrawal
17-Nov	ATM	CO-32	
17-Nov	ATM	CO-44	
17-Nov	ATM	CO-9	
20-Nov	Withdrawal		Counter Withdrawal
24-Nov	ATM	CO-45	
		November Total	
2-Dec	ATM	CO-17	
15-Dec	ATM	CO-42	
18-Dec	1131	President	
24-Dec	ATM	CO-46	
31-Dec	1132	CO-1	
		December Total	
		Total of funds used	

APPLICABLE LAW AND ANALYSIS

Internal Revenue Code section 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation section 1.501(a)-1(c) defines a private shareholder or individual for section 501 purposes as those persons having a personal and private interest in the activities of the organization.

Treasury Regulation section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

Treasury Regulation section 1.501(c)(3)-1(b)(1) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treasury Regulation section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation section 1.501(c)(3)-1(c)(2) states, in part, that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treasury Regulation section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Fact patterns suggesting inurement also frequently suggest excess benefit transactions between an exempt organization and a disqualified person under § 4958. The recent regulations issued under § 501(c)(3), at Treas. Reg. § 1.501(c)(3)-1(f)(ii), instruct the Service to consider a variety of factors to determine whether revocation is appropriate when section 4958 excise taxes also apply:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

- (A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;
- (B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
- (C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;
- (D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
- (E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and § 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction

The Commissioner has discretion to weigh the factors depending on the particular situation, but the latter two factors are weighted heavier only when the Organization has taken preemptive steps to correct the excess benefit transaction before they were brought to the Commissioner's attention. Treas. Reg. § 1.501(c)(3)-1(f)(iii).

Treas. Reg. § 1.501(c)(3)-1(f)(iv) Example 3 supposes that an organization's founder diverts significant portions of the organization's to pay personal expenses, which reduces the funds available to conduct exempt activity, over the course of multiple years. The board of trustees never authorized the organization to pay the founder's personal expenses and takes no action to seek repayment or terminate the founder's involvement with the organization. The founder claims that the payments represent loans, but no contemporaneous documentation exists and no payments of principal or interest were ever made to the organization. Based on the factors above, the regulations contemplate that not only does the diversion of funds constitute an excess benefit transaction under § 4958, but the prohibition against inurement has been violated and the organization no longer qualified as an organization described in § 501(c)(3).

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the Internal Revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

In accordance with the above cited provisions of the Internal Revenue Code and Treasury Regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In Better Bus. Bureau v. United States, 326 U.S. 279 (1945), the United States Supreme Court held that for an organization to qualify for tax exempt status, the organization must be exclusively devoted to an exempt purpose and the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Where an individual or small group has exclusive control over the management of the organization's funds and is the principle recipient of the distributions of the organization, prohibited inurement is strongly suggested. See Church of Internal Life & Liberty v. Commissioner, 86 T.C. 916, 927 (1986);

In Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969), cert. denied, 397 U.S. 1009 (1970), an organization argued that the Court should not find that the organization's earnings inured to its founders since it had made some payments to

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

him as repayments on a loan. The organization could not, however, produce any documents evidencing the indebtedness. The Court concluded that the church had failed to meet its burden of proof that a part of the corporate earnings was not a source of benefit to private individuals.

In John Marshall Law School v. United States, 228 Ct. Cl. 902 (1981), the law school and the college paid for the founding family's automobiles, education, travel, expenses, insurance policies, and personal equipment. The court determined that the expenditures for the founding family were not ordinary and necessary expenses in the course of the law school's and the college's operations. The court also held that the payment of such personal expenses for the founder's children by the law school provided direct and substantial benefit to the founder of the law school and his brother. The court held that these payments constituted prohibited inurement of the law school's earnings to the founder and his brother, parents of the children receiving the benefits.

In Greg R. Vinikoor v. Commissioner, T.C. Memo. 1998-152, the Tax Court held that whether a financial transaction constitutes a loan depends on all the facts and circumstances, including whether (1) there was a promissory note or other evidence of indebtedness; (2) interest was charged; (3) there was security or collateral; (4) there was a fixed maturity date; (5) a demand for repayment was made; (6) any actual repayment was made; (7) the transferee had the ability to repay; (8) any records maintained by the transferor and/or the transferee reflected the transaction as a loan; and (9) the manner in which the transaction was reported for Federal tax purposes.

In Rameses School of San Antonio, Texas v. Commissioner, T.C. Memo 20XX-85, the Tax Court held that a private school failed to qualify for exemption under section 501(c)(3) because it operated for the private benefit of its founder. The Tax Court stated: Factors highlighted of a prohibited relationship have included control by the founder over the entity's funds, assets, and disbursements; use of entity moneys for personal expenses; payments of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts; and purported loans to the founder showing a ready private source of credit. Nearly all of these factors are present here.

TAXPAYER'S POSITION

The taxpayers position is unknown at this time.

GOVERNMENT'S POSITION

The IRC 501(c)(3) tax exempt status of ORG (the "Organization") should be revoked because it is not operated exclusively for tax exempt purposes. An organization described in section

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

501(c)(3) must establish that no more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treas. Regs. 1.501(c)(3)-1(c)(1).

President is an officer, director, and a "private shareholder or individual" because she is a "person having a personal and private interest in the activities of the organization." as defined in §1.501(a)-1(c) cited above. She is the founder and president of ORG. President has sole control over the income, disbursements and assets of the Organization.

President diverted ORG's funds for her personal benefit as illustrated by the transactions described above.

President frequently withdrew cash for expenses for which there is no documentation to show they were ORG related expenditures. The withdrawals are always in even multiples of \$ which does not give the impression that the reimbursements corresponded to genuine expenses of ORG.

President also expended the Organization funds for non exempt purposes, including paying her personal expenses. She wrote a check for \$ to CO-3. The check was deposited to an account in her name. Research indicates that CO-3 is a company that receives funds for CO-4 Retirement accounts. The amount was not recorded as salary in the, and not included as wages in a Form W-2 or 1099.

There is no internal control to ensure that funds were used for exempt purposes. President had free reign over the following:

- to deposit the income or not deposit the income;
- use ORG's debit card; write checks for salary then not report on a Form W-2;
- make cash withdrawals at any time;
- write checks to herself with no documentation required;

Analysis under the factors laid out in Treas. Reg § 1.501(c)(3)-1(f) supports the conclusion that revocation of the Organization's exempt status is appropriate in this case.

There were no internal controls in place, the board did not question President's management of ORG's funds, and no safeguards were put in place to prevent the occurrence of excess benefit transactions. No correction is known to have been sought by or made to ORG.

In summary, President operated ORG more like a personal business than an exempt organization. President had control over ORG's funds, assets and disbursements; made use of the funds for personal use. The income and assets of ORG inured to the benefit of President the founder and President of the Organization, thus ORG was not operating exclusively for exempt purposes as

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

required by section 501(c)(3). See Rameses School of San Antonio, Texas v. Commissioner, T.C. Memo 20XX-85.

CONCLUSION

Accordingly, the Organization's status as an organization described under section 501(c)(3) should be revoked, effective January 1, 20XX, because it did not operate exclusively for exempt purposes. Instead, ORG's assets inured to and served the private interests of its founder President. Further, the Organization failed to comply with IRC 6001 and 6033 and has not established that it is observing the conditions required for the continuation of exempt status. Form 1120 U.S. Corporate Income Tax Return should be filed for tax year ending December 31, 20XX.